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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 JAMES CARTER,

12 Defendant.

CASE NO. CR11-5428BHS

ORDER

13  
14 This matter comes before the Court on Defendant James Carter's ("Carter")  
15 motion to dismiss indictment for impermissible delegation (Dkt. 25). The Court has  
16 considered the pleadings filed in support of and in opposition to the motion, the oral  
17 argument of the parties heard on November 7, 2011, and the remainder of the file and  
18 hereby denies the motion for the reasons stated herein.

19 **I. PROCEDURAL AND FACTUAL HISTORY**

20 On September 8, 2011, Carter was charged in a one-count indictment for failure to  
21 register and update sex offender registration in violation of the Sex Offender Registration  
22 and Notification Act, 18 U.S.C. § 2250(a) ("SORNA"). Dkt. 20. On October 7, 2011,

1 Carter filed a motion to dismiss indictment for impermissible delegation related to  
2 Congress's delegation of authority to the Attorney General under SORNA. Dkt. 25. On  
3 October 17, 2011, the Government responded. Dkt. 26. On October 25, 2011, the Court  
4 heard oral argument on the motion. Dkt. 27.

## 5 **II. DISCUSSION**

6 Under SONRA, "[t]he Attorney General shall have the authority to specify the  
7 applicability of the requirements of this subchapter to sex offenders convicted before the  
8 enactment of this chapter or its implementation in a particular jurisdiction, and to  
9 prescribe rules for the registration of any such sex offenders and for other categories of  
10 sex offenders who are unable to comply with subsection (b) of this section." 42 U.S.C. §  
11 16913(d).

12 In his motion, Carter argues that the indictment against him must be dismissed  
13 because Congress impermissibly "delegated to the Attorney General, an appointed  
14 official of the executive branch, the decision to determine whether SORNA should apply  
15 to individuals who were convicted of sex offenses that pre-dated the enactment of the  
16 statute," and therefore, the statute cannot constitutionally be applied to him. *See* Dkt. 25.

17 The Court, in denying Carter's motion, adopts the reasoning of the Court of  
18 Appeals for the Second Circuit in *United States v. Guzman*, 591 F.3d 83 (2nd Cir. 2010).  
19 In *Guzman*, the court stated that "[a] delegation is 'constitutionally sufficient if Congress  
20 clearly delineates the general policy, the public agency which is to apply it, and the  
21 boundaries of this delegated authority.'" *Id.* at 92-93 (quoting *Am. Power & Light Co. v.*  
22 *SEC*, 329 U.S. 90, 105 (1946)). In other words, Congress must provide the delegated

1 authority, in this case, the Attorney General, with the requisite “intelligible principle” to  
2 guide it. *Mistretta v. United States*, 488 U.S. 361, 372-73 (1989). The court in *Guzman*  
3 went on to conclude:

4 The Attorney General's authority under SORNA is highly circumscribed.  
5 SORNA includes specific provisions delineating what crimes require  
6 registration, 42 U.S.C. § 16911; where, when, and how an offender must  
7 register, *id.* § 16913; what information is required of registrants, *id.*  
8 § 16914; and the elements and penalties for the federal crime of failure to  
9 register, 18 U.S.C. § 2250. *See United States v. Ambert*, 561 F.3d 1202,  
10 1214 (11th Cir. 2009). If § 16913(d) gives the Attorney General the power  
11 to determine SORNA's “retroactivity,” it does so only with respect to the  
12 limited class of individuals who were convicted of covered sex offenses  
13 prior to SORNA's enactment; the Attorney General cannot do much more  
14 than simply determine whether or not SORNA applies to those individuals  
15 and how they might comply as a logistical matter.

16 591 F.3d at 93 (footnote omitted). The Court agrees with the Second Circuit’s opinion in  
17 *Guzman* and denies Carter’s motion to dismiss indictment for impermissible delegation.

### 18 **III. ORDER**

19 Therefore, it is hereby **ORDERED** that Carter’s motion for impermissible  
20 delegation (Dkt. 25) is **DENIED**.

21 Dated this 10<sup>th</sup> day of November, 2011.

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BENJAMIN H. SETTLE  
United States District Judge